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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

LEHMAN BROTHERS HOLDINGS INC., *et al.*,  
  
Debtors.

Chapter 11

Case No. 08-13555 (SCC)

LEHMAN BROTHERS HOLDINGS INC.,  
  
Plaintiff,

Adv. Pro. No.

-against-

AMERICA'S MORTGAGE ALLIANCE, INC. and  
AMERICA'S MORTGAGE, LLC,  
  
Defendants.

## **SECOND AMENDED ADVERSARY COMPLAINT**

Plaintiff Lehman Brothers Holdings Inc. (“LBHI”), the Plan Administrator under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors (the “Plan”), for its Complaint against Defendants America’s Mortgage Alliance, Inc. (“AMA”) and America’s Mortgage, LLC (“America’s Mortgage”, together with AMA, “Defendants”) alleges upon knowledge as to itself and its own conduct, and upon information and belief as to all other matters, as follows:

### **NATURE OF ACTION**

1. In this action, LBHI seeks to enforce its right to contractual indemnification for liabilities, losses, damages, claims, judgments and any other costs, fees and expenses LBHI incurred as a result of Defendants’ sale and/or submission of defective mortgage loans in breach of Defendants’ representations, warranties, obligations, and/or covenants and/or for which LBHI incurred liability due to Defendants’ acts, failures to act and/or omissions (the “Defective Loans”).

2. LBHI sold the Defective Loans to the Federal National Mortgage Association (“Fannie Mae”) and/or the Federal Home Loan Mortgage Corporation (“Freddie Mac”) under agreements that included representations and warranties about the Defective Loans that were coextensive with those made by Defendants. LBHI retained the right to seek indemnification from Defendants in the event it became liable for certain indemnification events. After Fannie Mae and Freddie Mac discovered that the mortgage loans breached certain of those representations and warranties, Fannie Mae and Freddie Mac made claims upon LBHI for losses suffered on the Defective Loans. In January and February 2014, respectively, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) approved settlements between (i) LBHI and Fannie Mae (ECF No. 42153), and (ii) LBHI and Freddie Mac

(ECF No. 42754), triggering LBHI's indemnification claims under the Agreements, as defined below, with Defendants.

3. By this action, LBHI seeks to recover money damages from Defendants for the indemnification claims.

4. In addition to each Defendant's separate liability for the Defective Loans it sold, LBHI also seeks to recover money damages from America's Mortgage for LBHI's claims against AMA because America's Mortgage is liable, as a guarantor, for AMA's obligations and liabilities to LBHI and for all costs and expenses LBHI incurred in enforcing its rights.

### **PARTIES**

5. On September 15, 2008, Plaintiff LBHI commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. LBHI is a Delaware corporation with its principal place of business in New York, New York.

6. Defendants are entities that, at all times relevant, were organized in and did business within the United States.

7. AMA, at all times relevant, was a wholly owned subsidiary of America's Mortgage.

### **JURISDICTION AND VENUE**

8. This adversary proceeding is commenced pursuant to Rules 7001 and 7003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

9. This Court has subject-matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334 as the matter has a close nexus with the Plan, which was confirmed by Order of the Bankruptcy Court, dated December 6, 2011 (the "Confirmation Order"), and became effective on March 6, 2012. The Court has retained post-confirmation

jurisdiction over this matter pursuant to section 14.1 of the Plan and paragraph 77 of the Confirmation Order.

10. Venue is proper under 28 U.S.C. §§ 157(a), 1408, and 1409.

11. This Court has personal jurisdiction over Defendants under Rule 7004(f) of the Bankruptcy Rules. In addition, this Court has personal jurisdiction over Defendants because Defendants, at all times relevant, were organized in and did business within the United States, and because the transactions giving rise to this controversy occurred in the United States.

### **FACTUAL BACKGROUND**

12. At all relevant times, LBHI engaged in the purchase and sale of mortgage loans directly or through affiliates, including Lehman Brothers Bank, FSB (“LBB”), then sold the loans to third parties, including Fannie Mae and Freddie Mac.

13. At all relevant times, Defendants engaged in mortgage origination, as well as the sale of mortgage loans on the secondary market to entities such as LBB and LBHI.

#### **A. The Governing Agreements**

14. This dispute arises out of (i) Defendants’ sale of residential mortgage loans to LBHI’s assignor, LBB, under one or more Loan Purchase Agreements with LBB (a “LPA”);<sup>1</sup> (ii) America’s Mortgage’s submission of residential mortgage loans to LBHI’s assignor, LBB, under one or more Broker Agreements with LBB (each a “Broker Agreement”);<sup>2</sup> and (iii) America’s

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<sup>1</sup> Although the language of certain sections referenced throughout this Complaint may vary slightly from LPA to LPA, it is generally consistent in all material respects.

<sup>2</sup> The operative Broker Agreement for each of the Defective Loans is the version in effect at the time America’s Mortgage sold the loan to LBB. Although the language of certain sections referenced throughout this Complaint may vary slightly from Broker Agreement to Broker Agreement, it is generally consistent in all material respects.

Mortgage's unconditional guaranty to LBHI's assignor, LBB, of AMA's full payment and performance under one or more of the LPA[s] (the "Guaranty").

15. The date[s] of the relevant LPA[s], Broker Agreement[s], and Guaranty are listed in Exhibit A attached hereto.

16. The LPA[s] specifically incorporate[s] the terms and conditions of the Seller's Guide of loan administrator, Aurora Loan Services LLC (the "Seller's Guide", together with the LPA[s] and Broker Agreement[s], "Agreements") which set forth additional duties and obligations of Defendants.<sup>3</sup> The Seller's Guide in its entirety is valid and binding on Defendants.

17. The Agreements set forth the duties and obligations of the parties with respect to the purchase and sale of mortgage loans, including but not limited to purchase price, delivery, and conveyance of the mortgage loans and mortgage loan documents.

18. The Agreements also set forth Defendants' duties and obligations regarding underwriting; representations and warranties concerning the parties and individual mortgage loans purchased, sold or submitted; and Defendants' indemnification obligations.

19. Pursuant to the Agreements, Defendants sold and/or submitted Defective Loans to LBB that resulted in LBHI being exposed to and incurring liability, as described further below.

20. The parties agreed that Defendants' obligations would extend to any subsequent purchasers and/or assignees, such as, in this case, LBHI. The Seller's Guide defines the "Purchaser" as LBB and, among others, its "successors and/or assigns." *See* Seller's Guide § 8.

21. The Broker Agreement[s] provide[s] that LBB as the "Lender, in its sole

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<sup>3</sup> The operative Seller's Guide for each of the Defective Loans is the version in effect at the time the Defendants sold the loan to LBB. Although the language of certain sections referenced throughout this Complaint may vary slightly from Seller's Guide to Seller's Guide, it is generally consistent in all material respects.

discretion, may assign this Agreement from time to time.”

22. The Guaranty provides that “[t]his Guaranty shall bind Guarantor, and its heirs, successors and assigns, and shall inure to the benefit of Purchaser and its successors and assigns, and Purchaser may assign its rights under this Guaranty to any assignee of the Note.” *See* Guaranty § 10.12.

23. In conjunction with the sale by LBB to LBHI of the Defective Loans, LBB assigned to LBHI all of its rights and remedies under the Agreements pertaining to the Defective Loans.

24. Further, the Seller’s Guide provides that LBHI, as a subsequent holder of any Mortgage Loan, “shall be a third party beneficiary” of the LPA[s]. *See* Seller’s Guide § 711.

**B. Defendants’ Representations Under the LPA[s]**

25. Accordingly, LBHI as the “assignee” and third-party beneficiary of the LPA[s], and as “subsequent holder” of the Defective Loans, is entitled to all the benefits of the Agreements, including the right to contractual indemnification.

26. With respect to each of the loans sold to LBHI (as, among other things, LBB’s assignee) under the LPA[s], Defendants made a number of representations, warranties, and covenants concerning the quality, characteristics, and underwriting of the mortgage loans; the property securing the mortgage loans; and the borrowers.

27. Specific examples of Defendants’ representations, warranties and covenants include, but are not limited to, the following:

No document, report or material furnished to Purchaser in any Mortgage Loan File or related to any Mortgage Loan (including, without limitation, the Mortgagor’s application for the Mortgage Loan executed by the Mortgagor), was falsified or contains any untrue statement of fact or omits to state a fact necessary to make the statements contained therein not misleading. Seller’s Guide § 703(1).

Seller . . . has duly and faithfully complied with and will continue to comply with: (i) all applicable laws, rules, regulations, decrees, pronouncements, directives, orders and contractual requirements with respect to the origination, closing, underwriting, processing and servicing of each Mortgage Loan . . . . Seller's Guide § 703(8).

The documents, instruments and agreements submitted for loan underwriting were not falsified and contain no untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the information and statements therein not misleading. No fraud was committed in connection with the origination of the Mortgage Loan. The Seller has reviewed all of the documents constituting the Mortgage Loan File and has made such inquiries as it deems necessary to make and confirm the accuracy of the representations set forth herein. Seller's Guide § 703(12).

There is no default, breach, violation or event of acceleration existing under the Mortgage or the Note and, no event has occurred or condition exists that, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration and neither Seller nor its predecessors has waived any default, breach, violation or event of acceleration. Seller's Guide § 703(18).

The Mortgage Loan has been originated and processed by Seller or Seller's correspondent in accordance with, and conforms with, the terms of this Seller's Guide and the Loan Purchase Agreement, and the Mortgage Loan has been underwritten in accordance with Underwriting Guidelines in effect as of the date of the Delivery Commitment applicable to the Mortgage Loan. The Mortgage Loan complies with all the requirements of the related Program Profile applicable to such Mortgage Loan . . . . Seller's Guide § 703(21).

The Mortgaged Property is lawfully occupied under applicable law, unless properly disclosed to Purchaser. All inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property, or with respect to the use and occupancy of the same (including, without limitation, certificates of occupancy and fire underwriting certificates), have been made or obtained by Seller or Seller's correspondent from the appropriate authorities. The Mortgagor represented at the time of origination of the Mortgage Loan that the Mortgagor would occupy the Mortgaged Property as the Mortgagor's primary residence, if applicable. Seller's Guide § 703(24).

Notwithstanding anything contained elsewhere in this Seller's Guide or the Loan Purchase Agreement, Seller hereby represents

and warrants that all appraisals and other forms of real estate valuation conducted in connection with each Mortgage Loan comply with applicable federal and state law, including without limitation, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 as applicable, and the requirements of Fannie Mae or Freddie Mac and the Seller's Guide and were conducted and delivered prior to approval of the Mortgage Loan application by either (i) in the case of an appraisal, by a qualified appraiser, duly appointed by the Seller, or (ii) a valuation method meeting the requirements of the Seller's Guide. The fair market value of the Mortgaged Property as indicated by the property appraisal or valuation is materially accurate. Any appraiser, inspector or other real estate professional engaged in the valuation of the Mortgaged Property has no interest, direct or indirect, in the Mortgaged Property or in any security thereof. The compensation of any appraiser, inspector or other real estate professional engaged in the valuation of the Mortgaged Property was not affected by the approval or disapproval of the Mortgage Loan. Seller's Guide § 703(36).

28. To the extent Defendants were also the underwriter of certain loans as permitted under the Seller's Guide or other applicable agreements, Defendants additionally represented, warranted and covenanted in Section 717(1) of the Seller's Guide that with respect to such loans:

All underwriting performed by Seller hereunder shall be in strict compliance with the underwriting guidelines and product descriptions contained in the Seller's Guide and such other guidelines and requirements as may be provided to Seller in writing from time to time.

29. Defendants represented and/or warranted that they had the ability to perform their obligations under, and satisfy all requirements of, the LPA[s]. *See* Seller's Guide § 702(5).

30. LBHI (as, among other things, LBB's assignee) relied upon the representations and warranties contained in the Agreements in purchasing the Defective Loans. Specifically, Section 701 of the Seller's Guide provides that:

Seller acknowledges that Mortgage Loans are purchased in reliance upon: (i) the truth and accuracy of Seller's representations and warranties set forth in the Loan Purchase Agreement and this Seller's Guide, each of which representations and warranties relates to a matter material to such purchase; and (ii) Seller's compliance



with each of the agreements, requirements, terms, covenants and conditions set forth in the Loan Purchase Agreement and this Seller's Guide.

**C. Defendants' Indemnification Obligation Under the LPA[s]**

31. Defendants agreed to indemnify LBHI (as, among other things, LBB's assignee) from liabilities, claims, judgments, losses and expenses it might sustain as a result of the Defective Loans, including attorneys' fees. Section 711 of the Seller's Guide, entitled "Indemnification and Third Party Claims," provides, in pertinent part, as follows:

In addition to any repurchase and cure obligations of Seller, . . . Seller shall indemnify Purchaser and Purchaser's designee (including, without limitation, any subsequent holder of any Note) from and hold them harmless against all claims, losses, damages, penalties, fines, claims, forfeitures, lawsuits, court costs, reasonable attorney's fees, judgments and any other costs, fees and expenses that the Purchaser may sustain in any way related to or resulting from any act or failure to act or any breach of any warranty, obligation, representation or covenant contained in or made pursuant to this Seller's Guide or the Loan Purchase Agreement by any agent, employee, representative or officer of Seller or Seller's correspondent. In addition to any and all other obligations of Seller hereunder, Seller agrees that it shall pay the reasonable attorney's fees of Purchaser incurred in enforcing Seller's obligations hereunder . . . .

**D. America's Mortgage's Representations Under the Broker Agreement[s]**

32. With respect to each of the loans submitted under the Broker Agreement[s], Defendant America's Mortgage made a number of representations, warranties, and covenants concerning the quality, characteristics, and underwriting of the mortgage loans; the property securing the mortgage loans; and the borrowers of the mortgage loans.

33. Specific examples of America's Mortgage's representations, warranties and covenants include, but are not limited to, the following:

Broker has made diligent inquiry into all facts and circumstances in making the loan, including all material representations and warranties of the borrower, and to Broker's knowledge, none of the

















63. Defendants' breaches of the Agreements and other acts and/or omissions as to the Defective Loans resulted in LBHI incurring liability and/or losses in an amount to be determined at trial, comprised of the settlement amount for each of the Defective Loans as identified in the court-approved Fannie Mae and/or Freddie Mac settlement agreement, plus prejudgment interest pursuant to New York law, attorney's fees, litigation costs, and all other fees and costs provided by the Agreements.

**SECOND CLAIM FOR RELIEF**  
**(Breach of Guaranty)**  
**(Against America's Mortgage)**

64. LBHI hereby incorporates by reference the allegations set forth above as though fully set forth herein.

65. The Guaranty is a valid and enforceable unconditional guaranty binding upon America's Mortgage.

66. AMA failed to make payment for contractual indemnification as required under the Agreements.

67. America's Mortgage failed to make payments required under the Guaranty, including payments related to AMA's contractual indemnification obligations, costs and expenses related to collection, and all other fees and costs provided by the Guaranty.

**PRAYER FOR RELIEF**

WHEREFORE, LBHI respectfully requests that this Court enter judgment in its favor and against Defendants, including as follows:

a) A judgment against AMA for all damages arising from or relating to its obligations under the indemnification provisions of the Agreements, in an amount to be determined at trial;

- b) A judgment against America's Mortgage for all damages arising from or relating to its obligations under the indemnification provisions of the Agreements, in an amount to be determined at trial;
- c) A judgment against America's Mortgage for all damages arising from or related to its obligations under the Guaranty, in an amount to be determined at trial;
- d) An award of all recoverable interest from all Defendants;
- e) An award of all costs and expenses incurred by LBHI in enforcing Defendants' obligations under the Agreements, including attorneys' fees and costs and any expert witness fees incurred in litigation; and
- f) Any other relief as the Court deems just and proper.

Dated: December 29, 2016.

/s/ Michael A. Rollin

Michael A. Rollin

Maritza Dominguez Braswell (admission pending)

Caleb Durling

Corey J. Longhurst (application to be filed)

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